Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of)	
)	
Applications of Sprint Nextel Corporation)	
Transferor	j	
	í	IB Docket No. 12-343
SOFTBANK CORP., and Starburst II, Inc.,	j)	
Transferees)	
)	
Joint Application for Consent to Transfer)	
International and Domestic Authority)		
Pursuant to Section 214 of the)	
Communications Act of 1934, as amended	ĺ	

PETITION TO DENY

The Crow Creek Sioux Tribe Utility Authority ("Tribe Authority") respectfully submits this Petition To Deny the transfer of international and domestic authority from Sprint Nextel Corporation ("Sprint") to Softbank Corp. and Starburst II, Inc. (collectively, "SoftBank"), or, in the alternative, the Tribe Authority requests that the Commission impose conditions on any transfer of authority to address the concerns of the Crow Creek Sioux Tribe identified herein. As explained below, Sprint has demonstrated a blatant disregard for the jurisdiction and sovereignty of the Crow Creek Sioux Tribe and its regulatory authority over Sprint's operation on the Crow Creek reservation, and, as such, the Commission, based upon its federal trust relationship with the Crow Creek Sioux Tribe, must require Sprint to meet all of its obligations, including those on the Crow Creek reservation, prior to approving any transfer of authority.

Background

Under the Constitution and By Laws of the Crow Creek Sioux Tribe, the Tribal Council is empowered and authorized to enact resolutions and ordinances governing the management of all economic and educational affairs and enterprises on the Crow Creek reservation. The Crow Creek Tribe Utility Authority Ordinance was amended in September 1997 to establish the Tribe Authority. Under the Crow Creek Tribe Utility Authority Plan of Operation, the stated purpose of the Tribe Authority is to "plan for, provide, and furnish utility services in all areas of the Crow Creek Sioux Reservation." In 2008, the Crow Creek Sioux Tribe and the Tribe Authority established a "Telecommunications Plan To Further Business, Economic, Social and Educational Development" ("Telecommunications Plan") on the Crow Creek reservation. Under this plan, the Tribe has taken steps to establish an advanced telecommunications infrastructure on the reservation to generate economic development, employment opportunities, and revenue, by pursuing, among other initiatives: (i) developing private sector incentive programs, such as the Minority Business Enterprise Program; (ii) taking advantage of its tribal sovereignty in engaging in business development; and (iii) applying for status as a tribal 8a business and foreign trade zone. The Tribe plans to use its expanded access to information and services to take advantage of programs and communications services aimed at addressing the social needs of the reservation, including access to affordable telecommunications – voice and broadband -services.

In furtherance of this Telecommunications Plan, the Crow Creek Sioux Tribe has taken several initiatives to further "tribal self-sufficiency and economic development" on the Crow Creek reservation, consistent with the Commission's *Tribal Consultation Policy Statement*. ²

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¹ See attached "Crow Creek Indian Reservation Telecommunications Plan To Further Business, Economic, Social, and Educational Development," August 19, 2008.

² In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with

Specifically, in furtherance of the Commission's efforts to provide tribes with greater access to telecommunications services, the Crow Creek Sioux Tribe has taken the initiative to establish one of the first new tribally-owned telecommunications carriers in the United States. Native American Telecom, LLC ("NAT"), which is majority owned by the Crow Creek Sioux Tribe, is now providing affordable advanced broadband and basic voice telecommunications services on the Crow Creek reservation, along with free Internet and computer access at its Internet Library and Technology Center.

Specifically, NAT now provides the following services on the Crow Creek reservation:

- high-speed broadband and telephone service to residential, business and tribal locations on the reservation;
 - through access to this new advanced telecommunications infrastructure, tribal members are taking advantage of business, educational, and social development opportunities that previously were out of reach;
- o an Internet Library with six (6) work stations providing free computer and Internet service for tribal members and residents that otherwise do not have access to such services; and
 - o as the Commission is well-aware, access to broadband service goes far beyond building a network, but must address "affordability," "computer access," "training and education," and an understanding of "value;" NAT is addressing all of these issues, and more, with its Internet Library and Technology Center on the Crow Creek reservation; the demand for the Internet Library's services is so great that NAT has built an additional facility on the reservation that will serve as a full-service communications and training center offering online education classes, computer classes and instruction, and free Internet and telephone services for individuals that otherwise would not have access to these basic services.

NAT has created seven jobs (three full-time and four part-time) on the Crow Creek reservation. These employment opportunities are substantial considering the well-documented high unemployment rate on the reservation. NAT's unique "tribal-private" partnership has attracted unprecedented financial and capital investment on the

Indian Tribes, Policy Statement, FCC 00-207, June 23, 2000 ("Tribal Consultation Policy Statement").

reservation and has paved the way for much-needed business, economic, education, and social development on the Crow Creek reservation.

The Tribe Authority is also attempting to work with other telecommunications carriers to ensure that the needs of the tribal members and residents of the reservation are met. In particular, the Tribe Authority has informed Eligible Telecommunications Carriers ("ETCs") operating on the Crow Creek reservation of the Tribe's expectations for engagement with the Crow Creek Sioux Tribe, consistent with the Commission's tribal consultation rule, 47 C.F.R. § 54.313(a)(9).³ The Tribal consultation notice was sent to all known ETCs on the Crow Creek reservation, including MidState Communications and Verizon Wireless.

And, in an effort to address the lack of reliable wireless communications service on the reservation, the Crow Creek Sioux Tribe submitted an inquiry to Sprint requesting information on the use of unused spectrum held by Sprint.⁴ Mobile wireless services, including access to 911 emergency services, are not widely available throughout the Crow Creek reservation, and, while Sprint holds a significant amount of spectrum on the reservation, it does not have any wireless coverage on the reservation.

In sum, the initiatives of the Crow Creek Sioux Tribe to (i) establish a tribally-owned telecommunications carrier, (ii) regulate the provision of telecommunications services on the reservation for the benefit of tribal members, (iii) obtain the necessary telecommunications resources, including spectrum, to serve the communications needs of tribal members and residents of the Crow Creek reservation, and (iv) undertake other initiatives to further economic, social, and educational development on the reservation, are

³ See attached Crow Creek Sioux Tribe Notice To All Eligible Telecommunications Carriers ("ETCs") on the Crow Creek Reservation from the Crow Creek Tribe Utility Authority, October 1, 2012.

⁴ See attached Crow Creek Sioux Tribe *Inquiry Into Unused Spectrum Held By Sprint on the Crow Creek Reservation* to Dan Hesse, Chief Executive Officer, Sprint, November 30, 2012.

all aimed at promoting tribal self-sufficiency and economic development on the Crow Creek reservation. As the Commission is well aware, new initiatives are not always favorably received, and that is certainly the case with the initiatives of the Tribe and its Tribe Authority. It is therefore critically important for the Commission to continue to support the Crow Creek Sioux Tribe, who has undertaken these initiatives to address "the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges in bringing connectivity to these areas" and the fact that "communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population," by requiring Sprint to comply with its legal and regulatory obligations prior to approving any transfer of control of the company.

In its Tribal Consultation Policy Statement, the Commission stated that it:6

recognizes the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. As domestic dependent nations, Indian Tribes exercise inherent sovereign powers over their members and territory. The federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes.

As such, the Commission committed to taking, among others, the following actions:⁷

- The Commission will work cooperatively with other Federal departments and agencies, Tribal, state and local governments to further the goals of this policy and to address communications problems, such as low penetration rates and poor quality services on reservations, and other problems of mutual concern.
- The Commission will welcome submissions from Tribal governments and other concerned parties as to other actions the Commission might take to further the goals and principles presented herein.

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⁵ See In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at para. 479, released November 18, 2011 ("Connect America Fund Order").

⁶ Tribal Consultation Policy Statement at p. 3-4.

⁷ Tribal Consultation Policy Statement at p. 5.

Consistent with the Tribal Consultation Policy Statement and other pronouncements made by the Commission, the Tribe Authority respectfully requests that the Commission take action as requested herein to further "tribal self-sufficiency and economic development" on the Crow Creek reservation.

PETITION TO DENY

Sprint Should Not Be Permitted To Benefit From The Sale Of Its Business To SoftBank When It Has Failed To Pay Its Debts To The Crow Creek Sioux Tribe

Under the Commission's "red light" rule, action on applications and other requests for benefits is withheld when the applicant is delinquent on debts owed to the Commission.⁸ As such, if Sprint is delinquent on a debt owed to the federal government, the Commission will not accept applications, process pending applications, or bestow other benefits on Sprint, such as the application for transfer of control to SoftBank, until the delinquency is resolved. As the Commission has recognized: ⁹

the federal government has a federal trust relationship with Indian Tribes, and this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. In this regard, the Commission recognizes that the federal government has a longstanding policy of promoting tribal self-sufficiency and economic development as embodied in various federal statutes."

Consistent with its fiduciary relationship with the Crow Creek Sioux Tribe, the

Commission must require Sprint to meet its legal responsibilities on the Crow Creek

reservation and pay for services provided by NAT to Sprint. Without enforcement by the

Commission, the jurisdiction and sovereignty of the Crow Creek Sioux Tribe is at risk. By

requiring Sprint to meet its legal obligations on the Crow Creek reservation as a condition of

any approval of transfer control, the Commission will be taking action consistent with its

federal trust relationship with the Crow Creek Sioux Tribe and will promote self-sufficiency

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⁸ See 47 C.F.R. § 1.1910.

⁹ Tribal Consultation Policy Statement at p. 3-4.

and economic development of the Tribe.

Sprint Should Not Be Permitted To Benefit From The Sale Of Its Business To SoftBank When It Fails To Recognize Its Tribal Obligations And Demonstrates A Blatant Disregard For The Orders Of The Crow Creek Tribe Utility Authority

On October 28, 2008, the Tribe Authority granted NAT authority to provide telecommunications service on the Crow Creek Reservation, subject to the jurisdiction of the laws of the Crow Creek Sioux Tribe. Soon thereafter, NAT launched one of the first new tribally-owned telephone systems in the United States and commenced providing telephone service and exchange access service pursuant to lawful tariffs filed with the Commission and the Tribe Authority.

Shortly after NAT launched its tribally-owned telephone system, Sprint improperly refused to pay NAT's lawfully-imposed switched access charges. In March 2010, NAT filed a complaint with the Tribe Authority alleging that Sprint was not paying NAT for services rendered on the reservation. On March 29, 2010, the Tribe Authority entered an Order finding that Sprint's "self help" in refusing to pay NAT's Access Tariff violated the "filed rate doctrine." Specifically, the Tribe Authority found that "[Sprint's] self-help actions could jeopardize the ability of a carrier, like [NAT], to serve the essential telecommunications needs of the residents of the Crow Creek reservation." The Tribe Authority also held "[NAT] commenced providing essential telecommunications services . . . to the residents of the Crow Creek reservation pursuant to [the Tribal Utility Authority's Approval Order]. . . . It is also a matter of public record that [NAT] has commenced offering new and critically needed services on the reservation."

The Tribe Authority's Order concluded by stating:

The Crow Creek reservation is a rural, high-cost service area. Access service revenue has historically been a critically important source of revenue for rural carriers, like [NAT], to support operations.... If carriers, like Sprint, are able to take self-help actions and not pay for services rendered subject to a lawful tariff, it would not only put at risk the continued

operation of carriers like [NAT], but would also put at risk the services relied upon by, and in some cases essential to[,] the health and safety of, consumers."

As of today's date, Sprint continues to completely ignore this Order and refuses to pay NAT for services rendered. Meanwhile, other carriers are paying NAT, which further demonstrates the improper nature of Sprint's actions. Based upon its federal trust relationship with the Crow Creek Tribe, the Commission must enforce the Order of the Tribe Authority as a condition of any approval of the transfer of control of Sprint.

Sprint Should Not Be Permitted To Benefit From The Sale Of Its Business To SoftBank When It Stockpiles Unused Spectrum And Ignores The Crow Creek Tribe's Request For Possible Use Of Such Spectrum

The Crow Creek Sioux Tribe submitted an inquiry on the availability of unused spectrum held by Sprint on the Crow Creek reservation. As the Commission is aware, it has provided notice to carriers that they should make available to Tribes unused spectrum. It has now been more than one month since the Tribe sent its request to Sprint, who initially responded that it would immediately reply to the Tribe's request, but, to date, has not responded. If Sprint is able to disregard the Commission's policy directives and completely ignore the Tribe's inquiry, then Sprint should not be allowed to benefit from the transfer of control of warehoused spectrum.

Sprint holds a very significant amount of spectrum on the Crow Creek reservation, but lacks any wireless coverage, resulting in spectrum being warehoused and consumers on the Crow Creek reservation lacking access to services available in other areas of the country where spectrum is being used. Consequently, the Commission must require Sprint to work cooperatively with the Crow Creek Sioux Tribe on its request for possible use of unused spectrum as a condition of any approval of transfer of authority to SoftBank.

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¹⁰ In the Matter of Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands, WT Docket No. 11-40, Notice of Proposed Rulemaking, FCC 11-29, March 3, 2011.

CONCLUSION

The Crow Creek Tribe Utility Authority respectfully submits this Petition To Deny

the transfer of international and domestic authority from Sprint to Softbank, or, in the

alternative, the Tribe Authority requests that the Commission impose conditions on any

transfer of authority to address the concerns of the Crow Creek Sioux Tribe identified

herein. Sprint's attempt to ignore its legal obligations on the Crow Creek reservation and

completely disregard the jurisdiction and authority of the Crow Creek Sioux Tribe is

contrary to the laws of the United States, the Commission, and the Crow Creek Sioux Tribe,

and, as such, Sprint should not be allowed to now benefit from its sale to SoftBank without

meeting its legal and financial obligations to the Crow Creek Sioux Tribe.

Respectfully submitted,

Crow Creek Sioux Tribe Utility Authority

// Brandon Sazue

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